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WALKER DIGITAL MANAGEMENT, LLC			COUGHLAN, PETER D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/787,283	Applicant(s) TEDESCO ET AL.
	Examiner PETER COUGHLAN	Art Unit 2129

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 September 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 18 and 27-75 is/are pending in the application.
 4a) Of the above claim(s) 27-75 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 18 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 26 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/06)
 Paper No(s)/Mail Date 4/29/2004

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
 5) Notice of Informal Patent Application
 6) Other: _____

Detailed Action

1. This office action is in response to an **AMENDMENT** entered September 28, 2007 for the patent application 10/787283 filed on February 26, 2004.
2. All previous Office Actions are fully incorporated into this Final Office Action by reference.

Status of Claims

3. Claims 18, 27-75 are pending.

Claim Rejections

4. 37 CFR 1.145. Subsequent presentation of claims for different invention.

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in §§1.143 and 1.144.

Election by Original presentation.

Newly submitted claims 27-75 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Although these claims are similar, they do represent distinct invention from the original invention. Claims 27-51 would fall under classification 348/155. 'Monitoring rule' of applicant can map to a 'motion detector.' Claims 52-60 would fall under 349/161. 'Matches a reference image' of applicant can map to 'object comparison.' Claim 61 would fall under classification 348/333.12. The division of the image can map to 'modification of displayed image' due to the fact the image is being sent to multiple destinations. Claims 62-75 would fall under the classification of 348/152. 'Emergency' of applicant can map to 'intrusion detection.'

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27-75 are withdrawn from consideration

as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The phrase "human activity is desired to be substantially nonexistent "in claim 18 is a relative term which renders the claim indefinite. The phrase "human activity is desired to be substantially nonexistent " is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. This threshold of 'substantially' needs to clearly defined. The Examiner views a single terrorist and harmful as 3 terrorist. Yet it could be stated that 1 is substantially' less than 3.

This claim needs to be amended or withdrawn from consideration.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walker, in view of Sacchi, in view of Regazzoni. (U. S. Patent 6720990, referred to as **Walker**; 'A distributed surveillance system for detection of abandoned objects in unmanned railway environments', referred to as **Sacchi** (cited in the 5/03/2007 Office Action); 'Scanning the Issue/Technology', referred to as **Regazzoni** (cited in the 12/06/2006 Office Action))

Claim 18

Walker anticipates receiving an image from an image capture device. (**Walker**, C1:53 through C2:4; 'receiving an image' of applicant is disclosed by the ability to 'view remote locations' of Walker.)

Walker does not teach in which the image capture device generates an image of an area in which human activity is desired to be substantially nonexistent.

Sacchi teaches in which the image capture device generates an image of an area in which human activity is desired to be substantially nonexistent. (**Sacchi**,

abstract; 'Human activity is desired to be substantially nonexistent' of applicant is equivalent to 'unmanned railway environments' of Sacchi.) It would have been obvious to a person having ordinary skill in the art at the time of the applicant's invention to modify the teachings of Walker by observing vacant environments as taught by Sacchi to have in which the image capture device generates an image of an area in which human activity is desired to be substantially nonexistent.

For the purpose of providing security purposes of a vacant building.

Walker teaches determining information related to the area (**Walker**, C1:28-36; 'Determining information' of applicant is equivalent to 'view customer behavior' of Walker.); receiving a request for a first user to monitor (**Walker**, C5:48-67; 'Request for a first user to monitor' of applicant is equivalent to 'user first request to monitor' of Walker.); receiving a user identifier (**Walker**, C5:48-67; 'User identifier' of applicant is equivalent to 'record of the user' of Walker.); verifying that the user identifier corresponds to the first user (**Walker**, C5:48-67; 'Verifying' of applicant is equivalent to 'log on the central server.); providing the first user with the image (**Walker**, C1:53 through C2:4; 'providing an image' of applicant is equivalent to 'view remote locations' of Walker.); receiving a response to the image by the first user, in which the response is one of: an indication that a human is present in the image (**Walker**, C1:16-28, C4:35-57; 'Human is present' of applicant is disclosed by the example of 'an emergency such as a robbery' of Walker. 'Indication' of application is equivalent to 'response' of Walker.), an indication that no human is present in the image. (**Walker**, C2:57-65, C1:53 through C2:4, C4:35-57; 'No human is present of applicant is equivalent to 'properties are being

monitored while they (owners) are away' of Walker. 'Indication' of application is equivalent to 'response' of Walker.)

Walker and Sacchi do not teach an indication of uncertainty whether a human is present in the image.

Regazzoni teaches an indication of uncertainty whether a human is present in the image. (**Regazzoni**, p1360, C1:16 through C2:25; 'Indication of uncertainty' of applicant is equivalent to 'error rate of less than 1%' of Regazzoni.) It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the teachings of Walker and Sacchi by having some flexibility within the system as taught by Regazzoni to have an indication of uncertainty whether a human is present in the image.

For the purpose of not responding to false positives.

Walker teaches providing additional users with the image (**Walker**, C3:46-59 and C4:35-57; 'Additional users' of applicant is equivalent to 'user devices 300a-c' of Walker.); receiving responses to the image by the additional users (**Walker**, C4:35-57; 'Responses' of applicant is equivalent to 'responses' of Walker.); evaluating the received responses (**Walker**, C9:61 through C10:16; 'Evaluating the responses' of applicant is equivalent to 'evaluates the responses' of Walker.); determining, based on the information related to the area, an entity to notify. (**Walker**, C8:38-62; 'Entity to notify' of applicant is equivalent to 'the authorities' of Walker.); and notifying the entity. (**Walker**, C8:38-62; Since the user does not know they could be one of many monitors and are under the impression they are the only one, this bypasses the 'bypasser

inaction' syndrome. Notifying an entity is inherent, based on the following 'the user is instilled with the belief that if he does not report the emergency, it will not be reported at all.')

Response to Arguments

5. Applicant's arguments filed on February 26, 2004 for claims 18, 27-75 have been fully considered but are not persuasive.

6. In reference to the Applicant's argument:

Upon entry of this amendment, which is respectfully requested, claim 18 will be amended solely to re-write claim 18 in independent form, claims 1-17 and 19-26 will be cancelled without prejudice or disclaimer, and new claims 27-65 will be added. No new matter is introduced by this amendment.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

II.Claim 18

Initially, Applicants respectfully note that claim 18 stands solely rejected on § 112 grounds and that no prior art rejection of claim 18 has been set forth by the Examiner. Upon traversal of the § 112 grounds for rejection applicable to claim 18 and the previous parent claim thereof (claim 1), therefore (since claim 18 is now written in independent form incorporating all the limitations of the previous parent claim), claim 18 should be allowed. Applicants further respectfully note that any new grounds for rejection of claim 18, particularly any new prior art grounds for rejection, cannot have been necessitated by the amendment herein that simply re-writes claim 18 in

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independent form. Accordingly, any new action that sets forth such a new ground for rejection should be non-final.

Examiner's response:

The rejection of claim 18 under 35 U.S.C. §112 stands. The Office Action is final.

7. In reference to the Applicant's argument:

III. The Examiner's Rejections

A. 35 U.S.C. §112, first paragraph

Claims 1, 3-9, 11-13, 18, and 21-22 stand rejected under 35 U.S.C. §112, first paragraph, for allegedly failing to comply with the written description requirement. This ground for rejection is moot with respect to claims 1, 3-9, 11-13, and 21-22 that are cancelled herein. As claim 18 is re-written herein in independent form to incorporate all limitations of the previous parent claim (claim 1), however, Applicants therefore respectfully traverse this ground for rejection with respect to claim 18 and with respect to the limitations of claim 1, as applicable to independent claim 18, as follows.

and

B. 35 U.S.C. §112, second paragraph

Claims 1, 5, 19, and 24-26 stand rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. This ground for rejection is moot with respect to claims 1, 5, 19, and 24-26 that are cancelled herein. As claim 18 is re-written herein in independent form to incorporate all limitations of the previous parent claim (claim 1), however, Applicants therefore respectfully traverse this ground for rejection with respect to the limitations of claim 1, as applicable to independent claim 18, as follows.

The Examiner states that the term "substantially", recited by claim 1, is a relative term that renders claims 1 indefinite. Applicants traverse this ground for rejection as follows.

Applicants respectfully note that it should be quite clear from Applicants' disclosure as

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filed that "an area in which human activity is desired to be substantially nonexistent" is descriptive of an area in which humans are not usually supposed to be (e.g., perimeters of nuclear power facilities or near or in the water of a public water supply). While members of the public are not supposed to be in such places, for example, there may occasionally be authorized personal in such areas. There is no evidence on the record that such a simple concept would fail to apprise one of ordinary skill in the art of the scope of the claimed embodiment.

The Examiner also states that a definition of the term "entity", recited by claim 1, is not provided, and that this term could refer to a person or a machine.

Applicants respectfully note that definitions for terms, particularly common terms such as "entity", are not required to make claim language definite. As long as one of ordinary skill would understand what is meant, then the claim is definite. Such is the case here. Further, the Examiner's ability to comprehend the term "entity" is strong evidence of definiteness.

Applicants respectfully reiterate (from Applicants' previous response), for example, that the Examiner's ability to articulate clearly what the Examiner believes the scope of the claimed term to be (i.e., "'entity' could be a person or a machine"; Office Action, pg. 4, first paragraph), is the epitome of definiteness. That the Examiner might prefer a term that the Examiner deems more precise is not adequate grounds for rejection. See, MPEP §2173.02 ("Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.").

At least for these reasons, the Examiner has simply and entirely failed to establish a *prima facie* case for indefiniteness, and the §112, second paragraph grounds for rejection should therefore be withdrawn with respect to claim 18, as re-written in independent for to incorporate the limitations of claim 1 (now cancelled).

Examiner's response:

Since the applicant cancelled all the claims except claim 18, the rejection of the remaining claims are moot. Only the rejection under 35 U.S.C. §112 concerning claim 18 remains. Office Action stands.

8. In reference to the Applicant's argument:

1. Presumption of Adequate Written Description

Applicants initially and respectfully note that a "description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971)." MPEP §2163 III.A.. In fact, "[t]here is a strong presumption that an adequate written description of the claimed invention is present when the application is filed. *In re Wertheim*, 541 F.2d 257,263, 191 USPQ 90, 97 (CCPA 1976)." MPEP §2163 I.A.

Accordingly, "[t]he examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97." MPEP §2163 III.A.

In rejecting a claim, the examiner must set forth express findings of fact regarding the above analysis which support the lack of written description conclusion. These findings should:

(A) Identify the claim limitation at issue; and

(B) Establish a prima facie case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of "unpredictability in the art" is not a sufficient reason to support a rejection for lack of adequate written description.
MPEP §2163 III.A.

2. Detail of Well-Known Terms Not Required

Applicants also respectfully note that "[t]he absence of definitions or details for well-established terms or procedures should not be the basis of a rejection under 35 U.S.C. 112, para. 1, for lack of adequate written description." MPEP §2163 II.A.1. "Information which is well known in the art need not be described in detail in the specification. See, e.g., *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1379-80, 231 USPQ 81, 90 (Fed. Cir. 1986)." MPEP §2163 II.A.2. Indeed, "[i]f a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., *Vas-Cath*, 935 F.2d at 1563, 19

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USPQ2d at 1116; Martin v. Johnson, 454 F.2d 746, 751, 172 USPQ 391,395 (CCPA 1972) (stating "the description need not be in *ipsis verbis* [i.e., "in the same words"] to be sufficient")." MPEP §2163 II.A.3.(a).

3. Required Factual Determinations

Applicants further respectfully note that determination of "[w]hether the specification shows that applicant was in possession of the claimed invention is not a single, simple determination, but rather is a factual determination reached by considering a number of factors." MPEP §2163 II.A.3.(a).(i).

The factors outlined in MPEP §2163 as being necessary to consider in formulation of a *prima facie* case of lack of written description include:

1. level of skill and knowledge in the art;
2. partial structure;
3. physical and/or chemical properties;
4. functional characteristics alone or coupled with a known or disclosed correlation between structure and function; and
5. the method of making the claimed invention.

4. The Examiner's Case as Set Forth

The Examiner states, with respect to claim 1, that because the term "first user" recited by claim 1 is not "defined within the specification", the claims contain "subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention." Office Action, pg. 2, bullet 4.

The Examiner also states, with respect to claim 18, that because the choices of responses "human is present", "no human is present", and "uncertainty [sic] a human is present" are not within the specification, and that "the specification is silent what specifying the types of responses a monitor can provide" (Office Action, pg. 3, second paragraph), the subject matter is therefore not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

5. The Examiner Has Failed to Set Forth a *Prima Facie* Case

Applicants note that the Examiner has failed to set forth any evidence supporting the conclusion that one of ordinary skill in the art would not have understood the inventor to be in possession of the claimed invention at the time of filing. Nor has the Examiner provided any findings regarding the factors required by MPEP §2163.

Further, even if the Examiner had set forth some amount of evidence supporting the allegation that Applicant's specification lacked written description for the terms "first user", "an indication that a human is present in the image", "an indication that no human is present in the image", or "an indication of uncertainty whether a human is present in the image", since each of such terms is present in the specification as filed (e.g., at least in claims 1 and 18 as originally filed), there exists a "strong presumption" that the specification meets the written description requirement. Accordingly, the Examiner's burden of proof is heightened with respect to the terms "first user", "an indication that a human is present in the image", "an indication that no human is present in the image", and "an indication of uncertainty whether a human is present in the image". Since absolutely no evidence has been provided by the Examiner, this heightened burden of proof has certainly not been met.

Further yet, since the terms "first user", "an indication that a human is present in the image", "an indication that no human is present in the image", and "an indication of uncertainty whether a human is present in the image" are very simplistic terms of art that are immediately recognizable and understandable, at least upon reading Applicants' disclosure as filed, the specification need not contain a detailed description of these terms to satisfy the written description requirement. In other words, the statement "first user", "an indication that a human is present in the image", "an indication that no human is present in the image", or "an indication of uncertainty whether a human is present in the image", without more, is believed by Applicants to be of well-known nature to one of ordinary skill in the art at the time of the invention.

Applicants also respectfully reiterate (from Applicant's previous response) that a "user" may be equivalent to a "Guardian" (e.g., "a Guardian's user device"), as the terms are utilized in the claimed embodiments, and that 'a plurality of', 'at least one', 'one or more', and 'a minimum number of' "Guardians" are described throughout Applicants' specification as filed (which necessarily implies at least first and second Guardians/users). Applicants also note that the term "Guardian" need not appear in the claim itself to provide written description support for the term "first user" recited in the claim.

Applicants also respectfully note that, despite the Examiner's statement that "the specification is silent what specifying the types of responses a monitor can provide", Applicants' specification as filed is replete with examples of the types of response that may be provided. Such response may include, for example, indications that a human is present, that a human is not present, that a problem exists, that a problem does not

exist, that a violation exists, that no violation exists, etc. No reading of Applicants' specification could fail to uncover the many exemplary types of responses described therein.

At least for these reasons, the Examiner has simply and entirely failed to establish a *prima facie* case for lack of written description, and the § 112, first paragraph ground for rejection should therefore be withdrawn with respect to claim 18, as re-written in independent form to incorporate the limitations of claim 1 (now cancelled).

Examiner's response:

The applicant makes an argument that the 35 U.S.C. §112 rejection is incorrect, and the Examiner disagrees. Claim 18 has three elements. 'An indication that a human is present', 'an indication that no human is present' and the third element 'an indication of uncertainty whether a human is present in the image.' This third element is not mentioned within the specification. Paragraph 0034 does not mention this third option, '(e.g., 1 = human present in the image, 0=no human present in the image).' In addition, ¶0441 through ¶0415 discloses 'binary determinations.' There is no mention of a third option and the specification teaches away from this third option based on ¶0441 through ¶0415. Office Action stands.

Examination Considerations

9. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023,

1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has the full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

10. Examiner's Notes are provided to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but link to prior art that one of ordinary skill in the art would find inherently appropriate.

11. Examiner's Opinion: Paragraphs 9 and 10 apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Claim 18 is rejected.

Claims 27-75 are withdrawn.

Correspondence Information

14. Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner Peter Coughlan, whose telephone number is (571) 272-5990. The Examiner can be reached on Monday through Friday from 7:15 a.m. to 3:45 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor David Vincent can be reached at (571) 272-3080. Any response to this office action should be mailed to:

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(571) 272-3150 (for formal communications intended for entry.)

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about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

/P. C./

Examiner, Art Unit 2129

Peter Coughlan

4/16/2008

/Joseph P. Hirl/

Primary Examiner, Art Unit 2129